

MANAGEMENT FRAMEWORK for the forced-return monitoring system in Moldova

January 2022

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Background and purpose of the framework

According to a recent study, the number of people being forcibly removed from the territory of the Republic of Moldova is constantly increasing.¹ International and regional human rights standards place obligations on states to conduct forced-return operations in a humane manner with respect for the dignity of the persons being returned and in compliance with human rights. Therefore, it is the state's duty to set up mechanisms to prevent human rights violations and to proactively ensure that human rights are protected within the framework of forced returns.²

Moldova has a forced-return system in place, but has lacked a dedicated system for human rights monitoring of its forced-return operations.³ It has only recently embarked on building a national forced-return monitoring system through the joint efforts of the most relevant actors: the Office of the People's Advocate (Ombudsman), the Bureau for Migration and Asylum (BMA) of the Ministry of Internal Affairs, and the NGO, the Law Centre for Advocates.

Since 2013, the International Centre for Migration Policy Development (ICMPD) has been developing the technical expertise and a multi-stakeholder network across Europe in the field of forced-return monitoring. With the accumulated know-how and multi-stakeholder network, ICMPD is now supporting the relevant Moldovan stakeholders to build a solid basis for sustainable and effective forced-return monitoring. It is doing so through the *"Development of a Forced-Return Monitoring System in the Republic of Moldova"* (FReMM) project, funded by the Polish Ministry of the Interior and Administration. The project is aimed at: (1) strengthening the legal and institutional framework relevant to forced-return monitoring; (2) increasing the capacities of the relevant institutions to monitor forced-return operations; (3) contributing to the effective communication and cooperation between the return-enforcing institutions and the monitoring bodies.⁴

It is against this background that stakeholders of the FReMM project were set to develop a management framework for the forced-return monitoring system in Moldova. This has been achieved through a series of dedicated workshops carried out from March to September 2021,

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- 1 Report on foreigners held in public custody (2019), Ombudsman's Office / Law Centre of Advocates, available here in Romanian: http://ombudsman.md/wp-content/uploads/2019/12/Studiul_Situatia_str%C4%83inilor_FINAL.pdf
 - 2 Report on Forced-Return Monitoring Systems in the European Union – Comparison of Legal Systems, Actors, and Procedures (2021), ICMPD.
 - 3 Report on the State of Play on Forced Returns in the Republic of Moldova (2021), ICMPD.
 - 4 FReMM project description is available here: <https://www.icmpd.org/our-work/projects/development-of-a-forced-return-monitoring-system-in-the-republic-of-moldova-fremm>

where European good practices were examined against the specific context of Moldova.⁵ This framework covers aspects related to the mandate and scope of monitoring, organizational structure and responsibilities, selection, training, and deployment of monitors, coordination and information exchange, etc.

The relevant stakeholders are encouraged to adhere to this framework by further developing in-house procedures that facilitate its application and use. In addition, as a first draft, this framework should be considered a living document which can be updated and amended over time to take into account emerging experiences and considerations identified during return operations.

5 Workshop on EU good practices (24 March); Workshop on Standard Monitor's Profile (23 April); Workshop on management framework (13 July); Workshop on monitoring guidelines (24 September); Workshop on Coordination and Information exchange (21 October)

Definitions

Acronym (if applicable)	Term	Definition
	Arrival phase	Covers the period starting from arrival in the country of return and ending when the returnees are handed over to the national authority in the country of return.
	Briefing	A meeting organized before the in-travel phase, with all relevant participants, in particular the escort leaders, the monitor(s), and doctors, in order to provide information about latest developments on the implementation of the return operation.
CRO	Collecting return operation	A return operation initiated by an Organizing EU Member State, with aircraft and escorts provided by a country of return and returnees handed over to them by the Organizing Member State/Participating Member State on the territory of a Member State.
	Debriefing	A meeting organized after the return operation, with all relevant participants, in particular the escort leaders, the monitor(s), and the doctor in order to assess the implementation of the return operation.
	Embarkation airport	An airport where passengers from a national contingent embark on a return operation.
EL	Escort leader	Leader of the national escort team and responsible, within his/her team, for the adequate implementation of the return operation. He/she will be the highest authority/decision maker after the captain.
EO	Escort officer	The security personnel, including persons employed by a private contractor, responsible for accompanying the returnees, in particular during their transportation out of the country.
	Fit-to-travel	Refers to a returnee's medical condition (both physical and mental), which indicates that the person can undertake the journey safely.

Acronym (if applicable)	Term	Definition
	Forced-return	The obligatory return of an individual to the country of origin, transit, or third country (i.e. country of return), on the basis of an administrative or judicial act.
	In-travel phase	Starts with the closure of the doors of the aircraft used for the removal and ends with the arrival at the final destination and the opening of the doors on arrival (country of return or, in the case of an unsuccessful return, back to the country of departure or, in the case of joint return operations, back to the hub), including the transit via another country.
	Illegal versus irregular migrant	Migrants and migration are often referred to as either irregular or illegal, sometimes interchangeably. However, language and terms carry certain meanings. In this regard, the term “illegal” carries a criminal connotation. Therefore, when referring to a person, “irregular” is preferred to “illegal”. Furthermore, migration flows are mixed and irregular migrants can therefore also be refugees and/or victims of trafficking. This perspective can also be observed in the fact that the Council of Europe distinguishes between illegal migration and irregular migrant. Based on the Resolution 1509 (2006) of the Council of Europe Parliamentary Assembly, illegal is preferred when referring to a status and process, and irregular is preferred when referring to a person.
	Monitor	Refers to the person who observes a return operation in accordance with the effective monitoring system established by the country.

Acronym (if applicable)	Term	Definition
	Monitoring	“Monitoring” is a broad term describing the active collection, verification and immediate use of information to address human rights issues. Human rights monitoring includes gathering information about incidents, observing events, visiting sites, discussions with authorities to obtain information and to pursue remedies and other immediate follow-up (Office of the High Commissioner for Human Rights, United Nations). In this context, the return operation is observed, analysed and reported on whether it was conducted in a humane manner, respectful of the dignity of the person and in compliance with fundamental rights as enshrined in the applicable international human rights law. The monitor of forced-return operations has no powers of intervention and thus should never intervene.
	Participant	Any person, including escorts, monitors, interpreters and medical staff, taking part in a return operation, other than the returnee.
	Pre-departure phase	The period starting with transportation to the airport. It covers the period from leaving the (temporary) holding/ detention facility until embarkation on the aircraft.
	Removal	The enforcement of the obligation to return, namely the physical transportation out of the country.
	Return	The process of a foreign national going back – whether in voluntary compliance with an obligation to return, or enforced – to his or her country of origin, or a country of transit in accordance with readmission agreements or other arrangements, or another third country, to which the third-country national concerned voluntarily decides to return and in which he or she will be accepted.
	Return decision	An administrative or judicial decision or act, stating or declaring the stay of a foreigner to be illegal and imposing or stating an obligation to return.
	Returnee	An irregularly staying foreign national who is the subject of a return decision issued by the country.

Acronym (if applicable)	Term	Definition
RO	Return operation	An operation that is coordinated by the returning authority under which returnees are returned either on a forced or voluntary basis.
	Risk assessment	The returning authority carries out a risk assessment of returnees (based on factors such as previous behaviour and removal history). Such assessments should be used to determine the number of escorts and ground staff and the size of the back-up team in order to ensure security during all the return operation phases, as well as for the determination of the possible use of coercive measures.
	Dynamic risk assessment	An ongoing risk assessment (see risk assessment above).
	Transit country	A country via whose airport return operation passengers transit to connect to the next flight.
VD	Voluntary departure	Voluntary compliance with an obligation to return to a third country.
	Voluntary return	The assisted or independent return to the country of origin, transit, or third country, based on the free will of the returnee.
	Vulnerable persons	Including minors, unaccompanied minors, persons with disabilities, elderly people, pregnant women, victims of human trafficking, single parents with young children, persons with medical conditions, and persons who have been subjected to torture, rape, or other serious forms of psychological, physical, or sexual violence.

1. The mandate, criteria, and scope of monitoring

The mandate

The mandate for forced-return monitoring comes under the overall mandate of the People's Advocate (Ombudsman), the country's independent body responsible for the protection of human rights. Under Law 52 of 2014 on the People's Advocate (Ombudsman), the office has unlimited and immediate access to any public or private entity to ensure the protection of all human rights and freedoms. This includes being able to pay unannounced visits at any time to any facility where people are being held to monitor their situation.

Although generic, the Ombudsman's mandate is nevertheless expansive and allows for the monitoring of at least those return phases that occur on Moldovan territory. Thus, the Ombudsman has unrestricted and immediate access to all authorities, their meetings (e.g. briefings and debriefings), to all their information (including confidential documents), and can visit anywhere at any time, on request or *ex officio*, with or without prior notice. In particular, the Ombudsman can have unlimited meetings and confidential conversations with any person whose liberty is restricted, including foreigners held at the Temporary Migrant Accommodation Centre.

The Ombudsman is supported by the National Mechanism for Torture Prevention (NPM) in Moldova (Council for Torture Prevention) composed of civil society organizations that like the Ombudsman, also have access to persons deprived of their liberty, as set out in the 2016 Regulation on the Organization and Functioning of the Council for Torture Prevention.

Regarding forced-return monitoring specifically, Order 01-1/5, 2021⁶ of the Ombudsman's Office established a dedicated team of forced-return monitors while also tasking the Office's Torture Prevention Directorate with collecting good practices, documenting and sharing lessons learned, and making proposals to further consolidate the forced-return monitoring system in Moldova. In addition, the Order allows for the involvement of civil society in forced-return monitoring missions. As a result, in September 2021, a Cooperation Agreement was signed with the NGO, the Law Centre of Advocates regarding forced-return monitoring, among other issues.

6 Order 01-1/5, 2021 of the Ombudsman's Office on establishing the team for the forced-return monitoring.

Monitoring criteria

The Ombudsman's broad mandate allows it to decide independently to verify or monitor human rights compliance. While it can receive complaints and act upon them, it may also act *ex officio* as part of its human rights monitoring mandate.

In deciding to monitor forced-return operations, priority is given to monitoring returns of vulnerable persons such as the elderly, families with children, or persons with disabilities. Conversely, monitoring the return of people who do not oppose the forced-return procedure as such can be de-prioritized whenever resources are limited.

Decisions for assigning monitors to particular operations are made using the criteria for deployment of monitor(s) outlined in Section 3 below.

The scope of the monitoring

The scope of the monitoring undertaken corresponds to the type of return operation being conducted and the different phases of the particular operation. For Moldova, monitoring is considered for two types of forced-return operations:

National return operations (NRO) to return third-country nationals who are subject to individual return decisions issued by the competent authorities in Moldova to a country of return. NROs are organized and carried out by land or by plane by Moldovan authorities in coordination with the country of return. Moldova organizes the national escorts and all the necessary support staff who will be traveling, such as medical personnel and interpreter(s), as needed. The Ombudsman's Office assigns the forced-return monitor(s), as applicable.

Collecting return operation (CRO) initiated by an EU Member State (Organizing Member State), with aircraft and escorts provided by Moldova and returnees handed over to them by the respective organizing EU Member State (possibly also by another participating EU Member State) on EU territory. The purpose is to remove third-country (Moldovan) nationals who are subject to individual return decisions issued by the respective EU Member State(s) from the territory of one or more EU Member States to their respective country of origin or third country of return (the Republic of Moldova).

Although there may be variations, both types of forced-return operation generally include the following phases, all of which can be monitored:

The pre-departure phase covers the period from leaving the (temporary) holding facility until embarkation on the aircraft. In this phase, the physical security check (body search) of the returnee(s) is conducted, the escort team is briefed and the returnee may stay in a holding/waiting/detention facility at the place of embarkation. The pre-departure phase ends after embarkation.

The travel phase begins once every passenger has boarded the aircraft and the door of the plane door has been closed. It ends with the arrival at the final destination, i.e. the country of return.

The arrival phase covers the period starting from arrival in the country of return (or at the border), and ends when the returnees are handed over to the national authorities of the country of return⁷, or in the case of an unsuccessful return, with the handover to the authorities back at the country of departure.

In the case of an unsuccessful return, returnees are brought back to the country of departure, including possible transit via another country.

⁷ In a CRO, the handover takes place during the pre-departure phase.

Summary points

Mandate

- Law 52 of 2014 on the People's Advocate (Ombudsman)
 - Unrestricted access to:
 - Any public or private entity
 - Any information, including confidential information
 - And:
 - At any time (upon request or *ex officio*)
- National Mechanism for Torture Prevention (NPM) known as the Council for Torture Prevention
- Ombudsman's Office Order 01-1/5 of 2021 that created the team for forced-return monitoring

Criteria used for monitoring a return operation

- Decision to monitor a forced-return operation derived from the Ombudsman's mandate
- Priority given to operations involving vulnerable persons (elderly, families with children, disabled, etc.)
- No priority for people who do not oppose the return

Scope

- **Types of return operations**
 - *National return operations (NROs)*
 - *Collecting return operations (CROs)*
- **Phases**
 - *Pre-departure phase*
 - *Travel phase*
 - *Arrival phase*

2. Responsibilities, organizational structure and procedures for forced-return monitoring

Responsibilities

The Bureau for Migration and Asylum (BMA) of the Ministry of Internal Affairs is the state authority in charge of return operations and their technical implementation. As mentioned above, the Ombudsman's Office has the overall mandate to monitor human rights compliance – either upon request or *ex-officio* – including by visiting persons deprived of their freedom. This includes forced-return monitoring, explicitly covered by *Order 01-1/5 of 2021 on establishing the forced-return monitoring team*. In addition, the Ombudsman's Office can extend its mandate to the NGOs it chooses to involve in its various areas of work, such as involving the Law Centre of Advocates in forced-return monitoring. Thus, the forced-return monitoring responsibilities in Moldova are mainly shared between the Ombudsman's Office and the Law Centre of Advocates pursuant to the Cooperation Agreement signed between the two entities in September 2021.

To provide for an environment conducive to efficient forced-return monitoring, the Bureau for Migration and Asylum, as the authority responsible for forced returns, cooperates closely with the monitoring bodies and provides them with the support and information they require to effectively carry out their function. The kind of support and information required is described in Section 4 below.

Organizational structure and procedures

Rather than instituting a new or parallel scheme, the organizational structure of the forced-return monitoring system is embedded in the inter-agency arrangements already in place. Law 52 of 2014 on the People's Advocate (Ombudsman) regulating the work of the Ombudsman and Law 164 of 2015 on the Organization and Functioning of the People's Advocate's Office already provide for a general monitoring mandate that can also cover forced-return operations.

In exercising its mandate, the Ombudsman's Office has the right to request and receive from any level any information, documents, and materials including those with limited access (e.g. medical information). The Ombudsman's Office also has unrestricted and immediate access to all authorities, their meetings (e.g. briefings and debriefings), all their information (including confidential documents), and can visit anywhere at any time, either on request or *ex officio*,

with or without prior notice. In particular, the Ombudsman's Office can have unlimited meetings and confidential conversations with any person whose liberty is restricted, including foreigners held at the Temporary Migrant Accommodation Centre.

The Ombudsman's Office has developed methodologies and procedures for the verification and/or monitoring missions it undertakes. Whenever a human rights violation is reported or ascertained, the Ombudsman's Office issues a notice to the authority or person in charge with recommendations and deadlines for remedial actions. It can also take disciplinary, civil, or criminal cases to court for human rights protection.

As further follow-up, the Ombudsman presents an annual report to the Parliament which is published in the Official Gazette, and may issue thematic reports as well. In addition, the Ombudsman can propose legislative amendments, challenge the constitutionality of existing legislation, issue opinions in individual court cases or generally for drafting new legislation, and promote human rights through various means such as training and information campaigns in partnership with others such as relevant NGOs or the media.

The general human rights monitoring system that is already in place means that forced-return monitoring only requires a minimal additional layer of organization. The organizational structure dedicated to forced-return monitoring mainly facilitates the communication and exchange of information between the different organizations involved, enabling them to effectively carry out the monitoring function.

The Ombudsman's Office has appointed its Torture Prevention Directorate to be responsible for organizing the forced-return monitoring process and has assigned a group of five forced-return monitors to monitor the forced returns (*Order 01-1/5 of 2021 on establishing the forced-return monitoring team*). The Directorate is also charged with coordinating with the authorities, civil society, and other interested actors with a view to further consolidating the forced-return monitoring system in Moldova. In this respect, the Ombudsman's Office signed a Cooperation Agreement with the NGO, the Law Centre of Advocates in September 2021 covering forced-return monitoring, among other areas of interest. Similar cooperation arrangements, involving also the Bureau for Migration and Asylum in its capacity of forced return authority, could be considered (see Annex 2 for a proposed tripartite Memorandum of Understanding).

Funding

There are many costs involved in running a robust forced-return monitoring system. The minimum cost for conducting the monitoring missions includes the monitor's Daily Subsistence

Allowance (DSAs), travel costs (including visas where necessary), insurance and vaccination costs (where necessary), accommodation, and monitoring fee. For the forced-return monitoring system to be sustainable over the longer term, it is also important to bear in mind other costs such as training expenses (initial, continuous, online, external, etc.), interpretation, translation, setting up and maintaining a database of monitors, as well as costs related to managing the preparation, coordination, and follow-up of the work.

Summary points

Responsibilities for forced-return monitoring

- **Returning authority:** *Bureau for Migration and Asylum (BMA)*
- **Monitoring bodies / monitors**
 - *Ombudsman's Office*
 - *NGOs: Law Centre of Advocates*

Organizational structure and procedures

- **Existing arrangements**
 - Law 52 of 2014 on the People's Advocate (Ombudsman)
 - Law 164 of 2015 on the organization and functioning of Ombudsman's Office
 - Ombudsman's Office's methodologies/ procedures for verification and monitoring
 - Ombudsman's Office's annual and thematic reports
- **Additional minimal arrangements**
 - Order 01-1/5 of 2021 establishing the forced-return monitoring team
 - (possible) Memorandum of Understanding between the relevant entities

Funding

- **Minimum costs**
 - Monitor's daily subsistence allowance
 - Travel costs (including visa, as needed)
 - Insurance and vaccination costs (as needed)
 - Accommodation
- **Other costs**
 - Training (initial, continuous, online, external, etc.)
 - Interpretation and translation
 - Setting-up and maintaining the database of monitors
 - Management of the forced-return monitoring system (preparation, coordination, etc.)

3. Selection, training, and deployment of monitors

Selection

As with the general organizational structure, the process for selecting monitors relies on the human resources management system that is already in place. Thus, the Ombudsman's Office has already assigned some of its permanent staff from the Torture Prevention Directorate to be forced-return monitors, and the list can be revised as needed. If an external candidate is needed to fill the pool of monitors, Law 164 of 2015 on the Organization and Functioning of the Ombudsman's Office allows the entity to involve experts and consultants to help it carry out its work as required. In this regard, the Ombudsman's Office launches periodic calls to select experts and consultants, and individuals can express their interest if they fit the profile.

Either way, the selection is carried out in a transparent manner and based on a standard monitor's profile that outlines the tasks and functions, the qualifications and experience required, and eligibility criteria including exclusions. The standard profile of forced-return monitors is included in *Annex 1*. The Torture Prevention Directorate which is in charge of further developing the forced-return system, keeps the list of available monitors updated and maintains a calendar of the forced-return monitoring missions.

Training

Training on forced-return monitoring (i.e. to objectively monitor human rights compliance and impartially report the findings) is a mandatory pre-requisite for any forced-return monitor who is selected (see Eligibility criteria in the Standard Monitors Profile in *Annex 1*). Other training such as on psychology, first aid, or emergency procedures on an aircraft is advantageous and is organized, as possible.

Forced-return monitors are being trained in existing training facilities and no others have been set up. Existing options include the Public Administration Academy where new civil servants receive both their initial training as well as training on a regular basis on various aspects of public service. Another option is the Academy at the Ministry of Interior. In addition, the Ombudsman's Office is planning to set up its own training centre in the future.

The initial basic training for monitors consists of a mix of content-related lectures, group work, practical demonstrations and peer-to-peer learning from experienced monitors. While funda-

mental rights concerns govern all training sessions, the following are some of the specific topics covered during the training:

- Technicalities of forced-return operations.
- Human rights.
- Practicalities of the use of coercive measures by escorts.
- Roles and mandate of escorts and monitors.
- Monitoring methodology.
- Communication skills (towards returnees and escorts).
- Gender and cultural sensitivities.
- Report writing.

Continuous training is as important as the initial training. Therefore, forced-return monitors are required to refresh and upgrade their knowledge and skills by periodically (re)taking additional training as appropriate. The main purpose of the regular refresher training is to streamline the monitoring of forced-return operations based on the lessons learnt by the monitors and monitoring body. The refresher training builds on the reports drafted by the monitors which are collected, reviewed and prepared for training purposes by the Torture Prevention Directorate of the Ombudsman's Office.

One important mode of training, especially in light of recent pandemic restrictions, is the training delivered online, be it through e-learning or other delivery platforms such as Zoom, WebEx, Teams or similar. In this respect, existing online training platforms – such as the one at the National Institute of Justice – could be used for the forced-return monitoring e-learning module. Alternatively, online training could be developed in-house that would include both e-learning and would make use of the other platforms mentioned above, particularly for the annual lessons learned sessions.

Deployment

When deploying monitors, a number of criteria such as language skills, sex, understanding of the ethnic, cultural, and social contexts of the returnees are taken into account. In the case of NROs, the ability to speak the language/s of the returnees concerned is regarded as an asset. Other specific expertise such as with vulnerable persons including work experience with children or persons with disabilities is also considered.

As a rule, forced-return operations are observed by the number of monitors considered necessary to ensure that the operation is comprehensively and effectively monitored. In particular, the following criteria guide the decision on the number of monitors that should be involved in a forced-return operation:

- The means of transportation (aircraft/bus/train) used and the specific interior layout (e.g. does an aircraft have one or two aisles, different sections divided by galleys, etc.);
- The duration of the operation until arrival at the final destination in the country of return;
- The number of returnees;
- The number of escorts.

If the return operation requires more than one monitor, whenever possible and relevant, a male monitor and a female monitor will be deployed. Wherever possible, a monitor who has the relevant language skills to be able to communicate with the returnees should be provided.

Those selecting monitors for deployment take the frequency of assignments into account to allow all the monitors from the pool to gain the necessary practice in conducting monitoring missions. In addition, a monitor's availability as well as possible risks (resulting from the risk assessment) are also factored in when selecting monitor(s) for deployment.

Summary points

Selection

- **Monitor's Standard Profile**
 - Developed during a dedicated workshop on 23 April 2021
- **Internal list of the Ombudsman's Office (to be revised as needed)**
 - Order 01-1/5 of 2021 on the creation of the forced-return monitoring team
- **External experts and consultants**
 - Regular calls for external experts in line with Law 164 of 2015 on the organization and functioning of the Ombudsman's Office

Training

- **Initial training (basic)**
 - Technical aspects of return operations, human rights, coercive measures, roles and mandates, monitoring methodology, communication, culture and gender, report writing, etc.
- **Continuous training (periodic)**
 - Refresher and additional subjects: psychological aspects, first aid, emergency procedures onboard, etc.
 - Based on monitors' reports (as analysed by the Ombudsman's Office)
- **Online training, including e-learning**
- **Existing platforms**
 - Public Administration Academy, Ministry of Interior's Academy, National Institute of Justice, etc.

Deployment

- **General criteria**
 - Language skills, sex, understanding of the ethnic, cultural and social contexts of the returnees, work experience with vulnerable persons, monitors' availability, risks, etc.
- **Criteria for deciding the number of monitors**
 - Type of transportation, duration of the operation, number of returnees, number of escort officers, etc.

4. Coordination and information exchange

Monitoring forced-return operations requires a large amount of coordination and information exchange before, during, and after the operation. It is important that parties involved in these exchanges adhere to the principles of data protection and confidentiality, at the same time ensuring an adequate level of transparency.

Communication between the contact person of each body involved is via e-mail and telephone. Coordination of the return operation will usually be the Escort Leader from the Bureau for Migration and Asylum.

Before the mission

To allow the monitoring mission to be sufficiently planned, it is critical that the Bureau for Migration and Asylum provides the monitoring body with all the relevant information about any upcoming return operation as soon as possible. It is therefore advisable that a standardised template is used by the coordinator at the Bureau for Migration and Asylum with at least the following information:

For CROs:

- Date, time, place
- Organizing Member state
- Planned number of returnees
- Departure point
- Itinerary
- Contact person
- Available seats for the monitors

For NROs:

- Date, time, place
- Number of returnees
- Itinerary of the operations
- Destination
- Contact person (the Escort Leader)
- Profile of returnees (any vulnerabilities, sex, medical considerations, etc.)

For CROs, the Bureau for Migration and Asylum should provide information about the upcoming return operation to the monitoring body from about 20 to 15 days before the operation, and for NROs, from about seven to five days before the operation. In addition, monitors should be promptly informed of any changes to the return operation.

During the monitoring mission

Interaction between the Escort Leader and a monitor is a critical aspect of any forced-return monitoring mission. First, the Escort Leader needs to ensure that the monitor(s) who have been assigned to the return operation are present at the briefings before the operations, and at the debriefings after the operations, whether those briefings are formal or informal. The briefings and debriefings are usually the opportunity for a monitor to seek clarification and answers as necessary.

During the monitoring of the operation *per se*, all communication with any of the other actors involved such as interpreters, medical staff, or the returnees themselves, should be carried out through the Escort Leader only. The monitor(s) who have been assigned to the operation should understand that the Escort Leader is also in charge of their safety and security throughout the whole return operation.

After the mission

Monitors working on their reports after the mission can still send requests for clarification to the designated contact person in the BMA. The BMA should promptly reply to these requests for clarification. Specific timeframes for the submission of requests for information and for replies from the BMA will be separately established for CROs and NROs based on the practice that is accrued over time.

Monitoring reports will be compiled and submitted to the Torture Prevention Directorate of the Ombudsman's Office for every forced-return operation that is monitored, even when there are no specific issues of concern that have been identified.

The Torture Prevention Directorate of the Ombudsman's Office controls the timely delivery of the monitors' forced-return monitoring reports and checks the quality of the reports to see that they are complete and comprehensive, as well as ensuring they adhere to data protection principles, accuracy, non-discrimination, and impartiality etc. The monitoring reports are then formally forwarded to the Bureau for Migration and Asylum.

Summary points

- **Communication channels**
 - E-mail and phone of contact persons
- **Minimum information regarding return operations**
 - Date, time, place; number of returnees and their profile (vulnerabilities); country(ies); itinerary; escort leader; number of seats available for the monitors, etc.
 - Any change to be promptly communicated to the monitors
- **Timeframe:**
 - cca from between 20-15 days before a CRO
 - cca from between 7-5 days before an NRO
- **Communication with the other participants**
 - Any communication with other participants should be through the escort leader who is in charge of safety and security
- **Briefings and debriefings**
 - Opportunities for clarifying information
 - Clarifying information also possible during drafting of report
- **The Ombudsman's Office checks the quality and timeliness of reports**
 - The Ombudsman's Office forwards the reports to the Bureau for Migration and Asylum

5. Final considerations and recommendations

This Framework will still require further defining or fine-tuning as the forced-return monitoring system in Moldova develops and the practice and experience of forced-return monitoring accrues. Therefore, one immediate recommendation is for this framework to be revised periodically, including the suggested timeframes, templates, workflow, etc.

Given the relative novelty of forced-return monitoring in Moldova, current legislation may need to be amended to include an explicit reference to the activity rather than covering it generically. This may help justify the allocation of financial means from the state budget for the various expenses listed in Section 2 above. Yet again, rather than creating separate funding mechanisms, the Ombudsman's Office should replicate its experience of incurring costs with other types of monitoring visits it carries out (e.g. monitoring visits to places of detention) as applicable, as well as look at the experience of other governmental authorities carrying out similar types of activity (e.g. that of the Bureau on Migration and Asylum in deploying its escort officers).

Legislative amendments will not, however, make the problem of state budget austerity go away. It is therefore suggested that extra-budgetary means for funding specific activities related to forced-return monitoring be explored. Moldovan public authorities, including the Ombudsman's Office, are allowed to write their own projects and apply for funding through various schemes. Thus, the Ombudsman's Office could do this either on its own or in cooperation with established NGOs or external partners, such as international organizations or counterparts in EU member states, for instance.

Regarding training, the systems already in place in the National Institute of Justice or the Ministry of Interior for example, provide the opportunity to integrate some of the training curricula developed within the FReMM project for the forced return monitors and the escort officers, respectively. As the Ombudsman's Office is planning to set up its own training centre in the future, it is critical that the training on forced-return monitoring and human rights for escort officers developed under the FReMM project, is integrated into its curricula as well. Not only has the project developed the relevant curricula and materials (manual, handouts, methodology), it has also trained trainers from among the monitors assigned to forced-return monitoring who could facilitate such training in the future with any of the training institutions mentioned.

In light of the organizational structures already in place and to avoid further burdening the public service system, it is advisable that any additional layer of organization is kept to the minimum. A useful next step would be for the Ombudsman's Office to conclude a Memorandum

dum of Understanding (MoU) with the Bureau for Migration and Asylum (which enforces the returns) and the NGO, the Law Centre of Advocates (which has its own team of trained forced return monitors) as a way of facilitating inter-agency cooperation. The MoU would cover the key procedural and operational aspects, division of labour, focal points, as well as aspects of coordination and information exchange as outlined in Section 4 above. In *Annex 2* is a proposed template for such a Memorandum of Understanding that has been developed within the FReMM project upon consultation with its beneficiaries.

Annex 1: Standard Profile of Forced-Return Monitors

1. Definition

A forced-return monitor is a person who carries out independent, objective, and impartial monitoring of return operations throughout all their phases. Forced-return monitors do not intervene during the execution of the return operation.

2. Tasks and functions

- To monitor compliance with the rights of returnees in forced-return operations, in line with national legislation, as well as regional and international human rights standards, in particular that returnees are treated in a humane manner and that their dignity is respected.
- To impartially report the findings relating to human rights compliance in return operations to the competent national authorities, with due consideration for both the facts and the specific circumstances and context.

3. Qualifications and experience required

A forced-return monitor has to have knowledge and understanding of:

- Human rights obligations, in particular fundamental rights - applicable in return operations such as human dignity, respect for the principle of non-refoulement, the necessity and proportionality principles and the duty of precaution in the context of use of force and coercive measures;
- The principle of non-discrimination and the right to complain to the competent authorities; national, regional and international human rights standards, procedures and recommendations pertaining to forced-return operations, such as the Council of Europe's

Twenty Guidelines on Forced Returns (2005)¹ and the standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)², among others.

- Regional and international standards on child protection, other vulnerable groups as well as gender aspects.
- National constitutional framework as well as relevant provisions of national legislation in the field of migration and asylum;
- Cultural and social contexts of the returnees.

A forced-return monitor has to be able to:

- Impartially observe fundamental rights compliance in return operations;
- Identify conduct and/or contexts in which a fundamental right might be breached or at risk and link this to the relevant legal standards;
- Take notes and draft a detailed monitoring report in accordance with the procedures and reporting tools, outlining all relevant information as well as detailing relevant observations, including recommendations as well as good practices and lessons learned concerning return activities;
- Demonstrate flexibility, openness and resilience to face the complexities of the role.

In addition, a forced-return monitor shall:

- Exercise the appropriate level of autonomy and the good ability to assess and act adequately in complex situations in the process of monitoring return operations.

1 Adopted by the Committee of Ministers on 4 May 2005 at the 925th meeting of the Ministers' Deputies of Council of Europe.
2 Council of Europe, <https://www.coe.int/en/web/cpt/standards>

4. Eligibility criteria

To be a monitor in a forced-return operation, a person must meet the following criteria:

- Be a law graduate and possess knowledge, skills and competences as described under “3. Qualifications and experience required”;
- Be appointed/nominated by the competent body with the mandate to monitor human rights compliance;
- Have undergone the training relevant to the tasks / functions of a forced-return monitor as described under “2. Tasks and functions”.
- Have experience in working with foreigners, either through monitoring of earlier return operations or through readmissions and/or places of accommodation/placement detention of foreigners;
- Have a conversational level of English, French, or Russian.
- Be able to psychologically cope with the tasks, including the ability to remain patient and calm in challenging situations. Evidence of some training in the area would be preferable.

In addition, the following would be advantageous:

- Specific expertise in child protection or experience of working with children;
- Experience in similar areas, such as prevention of torture, detention, or working with vulnerable groups, preferably in a migration context;
- Knowledge of languages spoken in countries of destination of return operations;
- Knowledge and/or experience in de-escalation and/or mediation techniques and methodologies;
- Basic medical knowledge;
- Training on emergency procedures on board an aircraft.

Incompatibilities:

- A former representative/attorney/case officer or someone who previously worked with the returnee(s) in another capacity cannot act as monitor in the respective monitoring operation.

Annex 2

Proposed Memorandum of Understanding on forced-return monitoring

_____ 2022

Chişinău

CONSIDERING the wish to ensure the national security and public order, especially the forced-return prerogative, as the case may be,

ACKNOWLEDGING at the same time the high vulnerability of persons subjected to forced-return, including the risks towards their rights and freedoms,

TAKING INTO ACCOUNT the *non-refoulement* obligation deriving from the national and international framework for refugee protection,

KEEPING IN MIND that voluntary return procedure is an alternative preferred to the forced-return, as the case may be,

BASED on the good cooperation between the relevant public authorities and the elements of the civil society interested in fulfilling in a responsible and transparent manner the actions in which they have a common interest,

The People's Advocate Office (PAO) headquartered in the city of Chişinău, 16 Sfatul Ţării Street, represented by Mrs. Maia Bănărescu, having the position of People's Advocate/Ombudsman,

The Bureau for Migration and Asylum (BMA) headquartered in the city of Chişinău, 125 Ştefan cel Mare şi Sfânt Boulevard, represented by Mrs. Eugenia Guriţenco, having the position of Director a.i.

and

The NGO „The Law Centre of Advocates” (LCA) headquartered in the city of Chişinău, 8 Vlaicu Pârcălab Street, represented by Mr. Oleg Palii, Executive Director

Named hereinafter “The Parties”, have signed this Memorandum of Understanding regarding the following:

I. PURPOSE AND OBJECT OF THE MEMORANDUM

The purpose of this Memorandum of Understanding is to coordinate and support the Parties' joint efforts to monitor forced-return operations to/from the Republic of Moldova, in order to prevent and protect against violations of the rights of returnees.

The object of this Memorandum of Understanding is to create a framework for coordination and information exchange for the organization and implementation of joint actions.

II. CONTRIBUTION OF THE PEOPLE'S ADVOCATE OFFICE

During the validity of this Memorandum of Understanding, the People's Advocate Office agrees to:

1. Organize the selection and assignment of forced-return monitors, taking into account the required numbers, availability, gender, possible risks (following the risk assessment), as well as considerations of balanced frequency to enable all monitors to obtain the necessary practical experience.
2. Ensure the initial and continuous training of monitors, including technical aspects of return operations, human rights, coercive measures, roles and mandates, monitoring methodology, communication, cultural and gender sensitivities, reporting, etc.
3. Regularly involve the Law Center of Advocates (LCA) by appointing LCA monitors in forced-return monitoring missions, as well as activities for consolidating the system, including training or information campaigns.
4. Check whether the forced-return monitoring reports are prepared on time by monitors and to verify the quality of such reports in terms of completeness, comprehensiveness, accuracy, as well as of compliance with the principles of data protection, non-discrimination and impartiality, among others.
5. Forward the forced-return monitoring reports to the Bureau for Migration and Asylum, making recommendations for remedy actions in case any violations are reported therein.
6. Reflect the aspect of forced-return monitoring in its annual reports and thematic studies;

7. Develop standard procedures and submit legislative proposals to strengthen the forced-return monitoring system.
8. Collect good practices and document the lessons learnt with a view to continuously improving the forced-return monitoring system.
9. Explore, in partnership with the other Parties, the budgetary and extra-budgetary options for financing the forced return monitoring system, both to cover the minimum costs (monitor daily allowances, travel costs, visa, insurance, vaccination, accommodation, etc.), as well as other costs related to the proper functioning and sustainability of the system (initial and continuous training, interpretation and translation, maintenance of the monitors database, coordination activities, etc.).

III. CONTRIBUTION OF THE BUREAU FOR MIGRATION AND ASYLUM

The Bureau for Migration and Asylum, as the authority responsible for forced-return operations hereby agrees to:

1. Cooperate closely with the other Parties and provide them with the support and information they need in order to perform effectively their forced-return monitoring function.
2. Communicate in due time and efficiently to the People's Advocate Office and the Law Centre of Advocates about any upcoming forced-return operation (about 20-15 days before collecting return operations (CROs), and about 7-5 days before national return operations (NROs)).
3. Include in its notifications regarding return operations at least the date, time, place, number of returnees and their profile (vulnerabilities), country(s), itinerary, name and contacts of the escort leader, as well as the number of places available for monitors.
4. Promptly inform the People's Advocate Office, the Law Centre for Advocates and the assigned monitors about any change to the forced-return operation.
5. Ensure the access of the monitors assigned to the briefings (which take place before the operations) and to the debriefings (organized after the operations), regardless if they are formal or informal.

6. Ensure the safety and security of the assigned monitors throughout the entire forced-return operation.
7. Answer promptly the monitors' questions asking for clarification during the briefings or debriefings, as well as when the monitors prepare their monitoring reports.
8. Follow up on remedy recommendations received from the People's Advocate Office, and from the Law Centre of Advocates, including by reviewing standard procedures, training activities, submitting legislative proposals, etc.

IV. CONTRIBUTION OF THE LAW CENTER OF ADVOCATES

During the validity of this Memorandum of Understanding, the Law Center of Advocates agrees to:

1. Have a pool of qualified lawyers for monitoring forced-return operations upon the request of People's Advocate Office and/or Bureau for Migration and Asylum.
2. Ensure the initial and continuous training of monitors, including technical aspects of return operations, human rights, coercive measures, roles and mandates, monitoring methodology, communication, cultural and gender sensitivities, reporting, etc.
3. Submit reports to the People's Advocate Office and/or the Bureau of Migration and Asylum for each monitored return operation, even when no breaches or problems are identified.
4. Ensure observance in the monitoring and reporting process of the requirements regarding completeness, comprehensiveness, accuracy, as well as the principles of data protection, non-discrimination and impartiality, among others.
5. Support the efforts of the People's Advocate Office to strengthen the forced-return monitoring system, including through training activities, information campaigns, documentation of good practices, reports and thematic studies, proposals for legislative amendments, etc.
6. Explore, in partnership with the other Parties, extra-budgetary sources to finance forced-return monitoring activities, including by writing projects and/or identifying other similar sources of funding.

V. CONTACT POINTS

For the purposes of this Memorandum of Understanding, the Parties have indicated the following points/persons of contacts:

1. The contact for the People's Advocate Office will be the **Torture Prevention Directorate**, in the person of *[name, e-mail, and phone]*.
2. The contact for the Bureau for Migration and Asylum will be the **Directorate for Combating Illegal Stay of Foreigners**, in the person of *[name, e-mail, and phone]*.
3. The contact for the **Law Center of Advocates** will be *[name, e-mail, and phone]*.
4. In case any modifications occur in terms of contact points/persons, the Parties to this Memorandum shall notify each other in due course.

VI. AMENDMENTS AND SETTLEMENT OF DISPUTES

1. This Memorandum of Understanding may be amended by the Parties by way of duly signed additional arrangements/amendments.
2. Such additional arrangements/amendments will be executed in written form and will be deemed an integral part of this Memorandum of Understanding.
3. Any disputes or conflicts which might arise from the implementation of this Memorandum of Understanding will be settled amicably by way of negotiations between the signatory Parties.

VII. ECONOMIC AND FINANCIAL SUBSTANTIATION

1. This Memorandum of Understanding does not require additional costs and financial obligations on the part of the Parties
2. All the activities provided for in this Memorandum of Understanding will be performed within the limits of the available funding.

VIII. FINAL PROVISIONS

1. This Memorandum of Understanding shall come into force on its day of signature and shall be valid for an indefinite period of time.
2. This Memorandum of Understanding may be terminated on the initiative of a signatory Party. Such termination intention must be made known by way of prior written notice given to the other Parties at least 30 days before the date of termination.
3. This Memorandum of Understanding is signed in Romanian, in three copies (one copy for each signatory Party).

DULY AUTHORIZED PERSONS' SIGNATURES:

**Bureau for Migration
and Asylum**

[name]

Law Center of Advocates

[name]

People's Advocate Office

[name]
